

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 2178 OF 2006

Amratlal and Dhirajlal & Co. Petitioners

Versus

Shri Kamlesh Singh Harnamsingh

Chowhan & Anr. Respondents

Mr.J.A.Udaipuri i/b M/s. Udaipuri & Co. for petitioners

Mr.V.N.Kantawala i/b Vivek Kantawala & Co. for
respondents

CORAM : P.V.KAKADE, J.

DATE : 19TH APRIL, 2006

P.C.:

1. Heard the learned counsel for both the parties.
Perused the record.

2. The petitioner-defendant has challenged the order
dated 25.4.2005 passed by the Trial Court in pending
R.A.E.& R. Suit No.436/721/2000 wherein the Interim

Notice No.5731 of 2004 came to be filed in order to recall the witness for evidence under Order 18 Rule 17 of the Civil Procedure Code. The learned trial judge discharged the said notice by reasoned order and hence the present petition.

3. In fact it is an admitted as well as evidential position that the evidence of both the parties is over and the arguments are under way in the trial court at that stage the present petition has been moved challenging the order dated 25.4.2005.

4. Before going into the merits of the matter, it may be noted that the defendant in the said pending suit instead of challenging impugned order passed in April 2005 moved another Int. Notice No.1788 of 2003 seeking similar relief to the extent that the particular document was sought to be exhibited of which original certified copy dated 10.10.2001 was obtained. That application was also rejected by the trial court by order dated 5.7.2005. The said order dated 5.7.2005 also not challenged by the petitioner-defendant but he preferred to move another Int. Notice No.2111 of 2005 making similar attempt to get the document produce on record. That application

also was rejected by the trial court by order dated 13.12.2005. Against the said order the matter was carried to this Court in Writ Petition No.734 of 2006. This court by order dated 13.2.2006 allowed the writ petition setting aside the order passed by the trial court under Int. Notice NO.2111 of 2005 and order under Int. Notice No.1788 of 2003 was upheld.

5. On this background now the order dated 25.4.2005 is sought to be challenged on various grounds.

6. After hearing the learned counsel for both the parties and on perusal of the reasoning adopted by the trial court, I have no doubt whatsoever that the notice is rightly discharged. If we perused the provision of Order 18 Rule 17 of C.P.C., it is clear that the provision provides that question can be put by the court and there is no issue involved in that provision regarding further examination of defendant's witness no.1 under any circumstances. Be as it may, the trial court appears to have used its discretion in proper manner and judiciously in rejecting the plea of the defendant. I am also satisfied that the entire chequered history of this proceeding definitely shows that it is nothing but

delaying tactics which may not be allowed under any circumstances. This is especially so that when cross examination of defendant's witness is over on 19.10.2004 and Commissioner's Report submitted thereafter, it is clear that from 19.10.2004 till December, 2004 no attempt was made by the defendants to disclose their intention to examine witness by name Ishwarsing Chauhan. It was submitted on behalf of the petitioner-defendant that certified copy of the document proposed to be brought on record was received by the defendant after the cross examination of defendant witness no.1 Kisanlal was concluded. It was further submitted by the defendant that the said Chauhan refused to give evidence and therefore, he has compelled to file application for recalling the witness. In my considered view, the plea cannot be entertained at the belated stage, as the arguments of both the parties are under way.

7. Be as it may, I am satisfied that the trial court has used its discretion in proper manner and judiciously and therefore, no interference is required by this court as contemplated under Article 226 of the Constitution of India.

8. In the result, the petition stands dismissed with costs, which are quantified at Rs.5000/=.

9. The trial court is directed to expedite the disposal of the suit, as the arguments are under way and hence, the suit to be disposed of on merits within two months from the date of this order.

10. At this stage the learned counsel for the petitioner seeks Stay of this order. In view of the facts and circumstances, I am satisfied that no Stay is required, which also would further delay the disposal of the suit. Hence plea for Stay stands rejected.